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No. 555

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA, PETITIONER

v.

ALFRED E. NORRIS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 6–8) is reported in 29 F. (2d) 744, and that of the Circuit Court of Appeals (R. 12–17) in 34 F. (2d) 839.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 3, 1929. (R. 18.) The petition for certiorari was filed January 3, 1930, and was granted March 3, 1930. (R. 18.) Jurisdiction to issue the writ is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question in this case is whether a person who gave repeated telephone orders to a bootlegger in

another State to ship him intoxicating liquors for beverage purposes and who received and paid for liquors shipped to him by the bootlegger pursuant to such orders is guilty of conspiracy to transport intoxicating liquors in violation of the National Prohibition Act.

STATUTES INVOLVED

Section 3, Title II, of the National Prohibition Act, c. 85, 41 Stat. 305, 308 (U. S. C. Title 27, Sec. 12), provides, so far as here important:

> No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Section 37 of the Criminal Code (U. S. C. Title 18, Sec. 88) provides:

> If two or more persons conspire * * * to commit any offense against the United States * * * and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined * * *.

STATEMENT OF FACTS

The respondent and one Joel D. Kerper were jointly indicted in the District Court of the United States

for the Eastern District of Pennsylvania upon two counts, the first charging that the defendants (R. 2)—

> did * * * conspire * * * together and with each other to commit a certain offense against the United States of America, to wit, to * * * transport * * * on various dates and from time to time, from Philadelphia, State of Pennsylvania, to New York, State of New York, certain shipments of intoxicating liquor * * * containing more than one-half of one per cent of alcohol by volume, and fit for beverage purposes, in violation of Title II of the national prohibition act * * *.

As an overt act in furtherance of the conspiracy charged, the indictment alleged that on or about February 1, 1928, the defendant Kerper shipped from Philadelphia, Pennsylvania, to the defendant Norris in New York, New York, a package containing six unlabeled bottles of intoxicating liquor containing more than one-half of one per cent of alcohol by volume and fit for beverage purposes. (R. 2.)

In the second count the defendants were charged with having conspired to ship on various dates and from time to time from Philadelphia, Pennsylvania, to New York, New York, packages containing spirituous and other intoxicating liquor, without labeling such packages on the outside thereof so as plainly to show the nature and quantity of the contents, in violation of Section 240 of the Criminal Code. An overt act in support of this count was also alleged. (R. 3.)

The defendant Kerper pleaded guilty to the indictment and was sentenced to imprisonment for one year and three months in the Federal penitentiary at Atlanta, Georgia, the sentence to run concurrently with that imposed upon him in another case. (R. 1.) The defendant Norris pleaded *nolo contendere* (R. 3), and upon the entry of that plea the following stipulation was filed (R. 4–5):

Stipulation of facts relative to defendant Alfred E. Norris

It is agreed by and between E. G. Davis, special assistant to the Attorney General, and Charles Denby, Jr., assistant United States attorney, on behalf of the United States, and Charles I. Thompson, Esq., and Frederic L. Ballard, Esq., representing defendant, Alfred E. Norris, that for all purposes in connection with the above proceedings, the following facts shall be taken to be true and of record herein with like effect as if set forth in the indictment, to wit:

Defendant, Alfred E. Norris, resides at 55 East Seventy-second Street, New York City. His business is that of investment banker.

Joel D. Kerper, the other defendant, for some years prior to the date of the indictment in the above case, conducted at premises known as 341 Walnut Street, Philadelphia, Pa., a business consisting in major part of the sale and transportation incidental to sale, of intoxicating liquors, in violation of the National Prohibition Act. Pursuant to said business, the said Joel D. Kerper supplied a

large number of customers in Philadelphia, New York, and other places. In the course of his business conducted as aforesaid, the said Joel D. Kerper on the dates indicated, made the following shipments by prepaid express from Philadelphia to the said Alfred E. Norris, addressed to him at 55 East Seventy-second Street, New York City. These shipments were labeled as containing the merchandise indicated in each case, and purported to be sent by the shippers named:

Date of shipment	Shipping document number	Alleged consignor	Alleged contents
10/26/26..	800-901	J. Bowen & Co	Syrup.
11/ 5/26..	800-949	National Supply Co	Olive oil.
2 /17/27..	800-942	C. Miller & Co	Grenadine.
6 /14/27..	800-936	M. L. Brown & Co	Olive oil.
6 /20/27..	800-936	M. L. Brown & Co	Olive oil.
7 /11/27..	800-933	Gill & Co	Grenadine.
8 / 5/27..	800-931	D. P. Brown & Co	Olive oil.
9 / 2/27..	800-917	Penn Paint Co	Paint.
10/17/27..	800-921	Penn Paint Co	Paint.
11/17/27..	800-923	J. P. Simpson	Ink.
12/ 9/27..	800-925	Paul J. Brown	Olive oil.
2 / 1/28..	67-901	Penn Supply Co	Grenadine.

In all of the above cases, defendant, Joel D. Kerper, was the true shipper, instead of the fictitious shipper named; and in every instance the package contained an unlawful shipment of intoxicating liquor for beverage purposes; to wit: rye whiskey. Said shipments were made by defendant, Joel D. Kerper to defendant, Alfred E. Norris, to fill orders for rye whiskey given by said Alfred E. Norris, to said Joel D. Kerper over the telephone. Payment for said rye whiskey was made from time to time by Norris to Kerper, either in cash or by check.

> The said rye whiskey was purchased by defendant, Alfred E. Norris, for his own consumption or that of his guests; and he was in no sense a dealer of liquor.

Norris thereupon moved in arrest of judgment, assigning the following reasons (R. 5):

> 1. Upon the face of the record the defendant is not guilty of the crimes charged.
>
> 2. The record shows that defendant merely purchased liquor and the purchase of liquor is not a crime.
>
> 3. The record fails to show in this defendant the degree of affirmative cooperation necessary to render him liable as a conspirator to the substantive offences involved—to wit: the unlawful transportation or false labelling of interstate shipments of liquor.

The motion was denied and Norris was sentenced to pay a fine of $200. (R. 5.) In an opinion contemporaneously handed down (R. 6–8) the District Court "agreed" that the mere purchase of liquor is not an offense under the National Prohibition Act and that the purchaser can not be convicted of aiding and abetting the sale. It furthermore assumed, without deciding, that where there is nothing in the case but a simple sale the purchaser can not be convicted of conspiring with the seller to make the sale, referring in this connection to the statement of this Court in *United States* v. *Katz*, 271 U. S. 354, that an indictment for conspiracy in such a case would be of doubtful validity.

But it distinguished the instant case from one of a simple sale (R. 7) by stating that transportation, a distinct substantive offense under the National Prohibition Act, was not necessarily involved in every sale, as where an owner of property on which liquor is stored sells both the liquor and the property to another who thereafter occupies the premises. The court, therefore, held that the rule laid down in the *Katz case, supra*, was inapplicable to an indictment for conspiracy to transport.

Regarding Norris' contention that the record fell short of proving him a conspirator to commit the substantive offense of transportation the court observed (R. 7–8) that the participation of Norris in the transportation far exceeded mere guiltless acquiescence, in that his repeated orders made him party to an agreement requiring Kerper to transport the liquor.

The court's conclusion was (R. 8):

> (1) that a conviction may be had of a buyer and seller of liquor for conspiracy to transport liquor in a case where the agreement is that the delivery of the liquor sold is to be effected by transportation from the seller to the buyer, and (2) that an order by a purchaser to a bootlegger located at a distance, to deliver liquor followed by transportation, delivery and payment is sufficient evidence of such an agreement.

Upon appeal, the judgment was reversed by the Circuit Court of Appeals, one judge dissenting.

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(R. 17, 18.) In that court, counsel for the Government, with a view to limiting the inquiry to the question whether a charge of conspiracy to transport liquor illegally will lie against the purchaser and the seller of the liquor where the negotiations resulting in the sale contemplated a transportation and a delivery of the liquor, waived the second count in the indictment and that count was not considered by the court.

The considerations which led the Circuit Court of Appeals to conclude that "a sale of liquor involving such transportation as is necessary to effect the delivery to the purchaser, does not subject the purchaser and seller to an indictment for conspiracy to transport" may be summarized as follows: (R. 15–16) (1) Under the Eighteenth Amendment and the National Prohibition Act the purchase of liquor is not an offense; (2) the indictment of a purchaser for conspiracy with the seller is an attempt to make the purchaser liable indirectly for an act which Congress has refused to make an offense; (3) a charge of conspiracy to commit an offense will not lie where a concert of action between the parties charged is necessary to the commission of the substantive crime; (4) in the case of buyer and seller, transportation by the seller is a mere incident of the sale necessary to its completion by delivery to the purchaser, and as a sale necessarily involves an agreement, or concert of action, between the buyer and the seller to effect the purchase, a charge of conspiracy will not lie against the purchaser for agreeing with the seller that the liquor shall be transported

and delivered to the purchaser; (5) under the authorities a purchaser is not guilty of aiding and abetting either the sale or the delivery, and the degree of cooperation to constitute one a conspirator must be more than that involved in the mere aiding and abetting of the commission of the substantive offense.

On application of the Government certiorari was granted by this Court March 3, 1930.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In reversing the judgment of the District Court.

2. In holding that "a sale of liquor involving such transportation as is necessary to effect the delivery to the purchaser, does not subject the purchaser and seller to an indictment for conspiracy to transport."

3. In holding that one who gives orders to a bootlegger in another city to ship him intoxicating liquor for beverage purposes and who receives and pays for the shipments of liquor consigned to him by said bootlegger in response to such orders is not guilty of conspiracy to transport intoxicating liquor in violation of the National Prohibition Act.

4. In holding that the evidence failed to show such a degree of cooperation by Norris in the illegal transportation as to render him guilty as a conspirator to commit that offense.

SUMMARY OF ARGUMENT

The decision of the court below, that the purchase of liquor is not an offense and that the Government was here attempting to make respondent liable in-

directly for an act which was a mere incident in the purchase of liquor, is based upon the conclusions that a charge of conspiracy to commit an offense will not lie where a concert of action between the parties charged is necessary to the commission of the substantive crime; that where liquor is sold by one person to another it is essential that there be a concert of action between the buyer and seller to effectuate the sale, and, therefore, neither can be charged with conspiracy to make the sale; that delivery of the thing sold is essential to consummate the sale; and that, as delivery in the present case could be accomplished only by transporting the liquor to the place of delivery, the transportation was a mere incident of the sale necessary to its completion by delivery, and, therefore, neither party to the transaction is subject to prosecution for conspiracy to bring about such transportation.

These conclusions are erroneous for the following reasons: The case actually does not involve the question whether the purchase of liquor is or is not an offense. The offense charged was not conspiracy to sell liquor but conspiracy to transport it. Under the National Prohibition Act the transportation of liquor without a permit is a distinct offense, whether the transportation be for the purpose of sale at destination, for personal consumption by the transporter, or for delivery to one to whom it has been sold. Actual delivery is not required to complete a sale, nor is transportation essential to effect delivery. Even if it be assumed that the transportation here involved

was essential to delivery and was a mere incident of the sale, it was nevertheless an offense. Unlike the offenses of illegal sale of liquor, bribery, dueling, and the like, which necessarily require for their commission an agreement or concert of action between two persons, the offense of illegal transportation may be committed by one person without any agreement or concert of action with anyone else.

Hence, the rule which forbids indictments for conspiracy in that class of crimes which can not be committed except by agreement of two parties is not to be extended to the transportation of liquor, even though it be incidental to sale, and the dictum in the *Katz case*, to the effect that the embarrassment caused by that rule could be avoided "only if the buyer and seller were charged with conspiring to commit a substantive offense having an ingredient in addition to the sale, not requiring the agreement of two persons for its completion" supports the indictment in this case.

Respondent's repeated orders telephoned from New York to Philadelphia, and his receipt and payment for the consignments of liquor shipped to him pursuant thereto, leave no room for doubt that the illegal transportations were the result of an agreement, mutual understanding, or concert of action between him and his codefendant.

Lastly, the effect of the opinion of the court below is that ordinary rules of criminal liability for conspiracy will not be invoked against a purchaser of liquor. Such a notion finds no support in the law.

The National Prohibition Act invests a purchaser of liquor with no special immunity.

ARGUMENT

A PURCHASER OF LIQUOR MAY BE GUILTY OF CONSPIRACY TO TRANSPORT THE LIQUOR PURCHASED BY HIM AND THE CONVICTION IN THIS CASE SHOULD HAVE BEEN SUSTAINED

While the court below holds that the purchase of liquor is not an offense under the National Prohibition Act and speaks of this prosecution as an attempt to make the respondent liable indirectly for an act which was a mere incident in the purchase of liquor, we are not here concerned with the legal position of a simple purchaser. The case actually does not involve the question whether the purchase of liquor is or is not an offense.

The court reached its decision upon the following line of reasoning: That a charge of conspiracy to commit an offense will not lie where a concert of action between the parties charged is necessary to the commission of the substantive crime; that where liquor is sold by one person to another it is essential that there be a concert of action between the buyer and seller to effectuate the sale, and, therefore, neither can be charged with conspiracy to make the sale; that delivery of the thing sold is essential to consummate the sale, and that, as delivery in the present case could be accomplished only by transporting the liquor to the place of delivery, the transportation was a mere incident of the sale

necessary to its completion by delivery to the purchaser, and, therefore, neither party to the transaction is subject to prosecution for conspiracy to bring about such transportation.

We submit that this reasoning is fallacious. The charge against Norris is not conspiracy to *sell* liquor but conspiracy to *transport* it, and under the facts in this case rests not upon his position as purchaser in a single transaction but as a regular patron of the bootlegger Kerper, each purchase requiring distant transportation following the purchase. Transportation is not necessarily involved in every sale of liquor and it is made a distinct substantive offense under the National Prohibition Act. Under Section 3, Title II, of the Act, the offense is committed when the transportation is effected in any manner or for any purpose not authorized by that Title. The term is there used in its ordinary sense. *Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100. As was said by this Court in that case (pp. 121–122):

> Some of the contentions ascribe a technical meaning to the words "transportation" and "importation." We think they are to be taken in their ordinary sense, for it better comports with the object to be attained. In that sense transportation comprehends any real carrying about or from one place to another. It is not essential that the carrying be for hire, or by one for another; *nor that it be incidental to a transfer of the possession or title.* If one carries in his own conveyance for his own purposes it is transportation no less than

> when a public carrier at the instance of a consignor carries and delivers to a consignee for a stipulated charge. (Italics ours.)

See also *Grogan* v. *Walker & Sons*, 259 U. S. 80, 90; *Corneli* v. *Moore*, 257 U. S. 491, 496–497.

It is immaterial, therefore, by whom or for what purpose the transportation takes place if not authorized by the Act. Whether it be for the purpose of sale at destination, for personal consumption by the transporter, or for delivery to one to whom it has been sold, the offense is nevertheless committed. In the present case, it is conceded that the liquor was transported and for beverage purposes, and the position of the Government is that Norris was involved in such unlawful transportation. As the transportation was not authorized by Title II of the National Prohibition Act, it was clearly an offense under Section 3.

We submit that the language of this Court in *United States* v. *Katz*, 271 U. S. 354, 355, tends to support the conspiracy charge in this case. The Court said:

> The overt act charged in each indictment was the sale of whisky by one defendant to the other. This is an offense under the National Prohibition Act; but as the defendants in each case were only one buyer and one seller, and as the agreement of the parties was an essential element in the sale, an indictment of the buyer and seller for a conspiracy to make the sale would have been of doubtful validity. Compare *United States* v. *N. Y. C. & H. R. R.*,

146 Fed. 298; *United States* v. *Dietrich*, 126 Fed. 664; *Vannata* v. *United States*, 289 Fed. 424, 427. This embarrassment could be avoided in an indictment for a criminal conspiracy only if the buyer and seller were charged with conspiring to commit a substantive offense having an ingredient in addition to the sale, not requiring the agreement of two persons for its completion. See *Chadwick* v. *United States*, 141 Fed. 225.

Unlike the offense of illegally selling liquor, which necessarily requires for its commission an agreement or concert of action, tacit or otherwise, between buyer and seller, the offense of transportation may be committed by one person without any agreement or concert of action with anyone else. See *Chadwick* v. *United States* (C. C. A. 6th), 141 Fed. 225, 236. The rule that a charge of conspiracy to commit an offense, such as illegal sale, bribery, bigamy, adultery, dueling, and the like, will not lie where the only persons charged are those whose agreement or concert of action is essential to the commission of the substantive crime, has no application, therefore, to a charge of conspiracy to transport in violation of law. Irrespective of purchase or sale, one may transport by himself, or from himself at one point to himself at another point.

It is this extraneous element which Norris tries to merge into purchase and sale, and which the court below does merge, with the statement that the Government is here attempting to maintain a prosecution not contemplated by Congress. The additional

feature of transportation involved in the transactions in this case is the very ingredient which this Court excepted from the rule announced in the *Katz case, supra*. Unlawful transportation is a substantive offense against the laws of the United States and, so far as its relation to sale and delivery is concerned, is an act the performance of which does not require the agreement of two persons. A sale could be agreed upon, the transportation completed, and the sale then repudiated at the delivery point. The sale would thus not be completed, but the transportation would be.

Recognising the force of the foregoing principles, and in order to avoid their effect, the court below adopted the theory that the purchaser is not chargeable with the transportation of liquor in this case because it was a mere incident of the sale of the liquor to him. This conclusion was based upon the further holdings of the court that delivery of the liquor was required to complete the sale and that the transportation in question was essential to effect such delivery. It is settled, however, that actual delivery to the purchaser of the article sold is not essential to a completion of the sale. There is an obligation to deliver under a sale, but no formal ceremony is necessary, nor is manual delivery required. Thus, it has been held that the seller fulfills his obligation where the goods are placed at the buyer's disposal so that he may remove them without legal obstruction (*Glasgow* v. *Nicholson*, 25 Mo. 29; *Davis* v. *Alpha Portland Cement Co.*, 134 Fed. 274), or where the goods are at a dis-

tance from the place of sale and the buyer is told to go and take them (*Patrick* v. *Meserve*, 18 N. H. 300).

Moreover, even if it be conceded that a sale can not be consummated without an actual delivery of the thing sold, it is nevertheless plain that such delivery may be made without a transportation. This is illustrated by the examples given by the District Court of the case where a bootlegger, without any previous understanding or knowledge on the part of the purchaser, takes liquor to his house, sells it to him and leaves it there; as well as of the case where liquor and the premises upon which it is stored are sold together and the purchaser moves in upon the seller's moving out. Upon placing the consigned liquor in charge of the express company in Philadelphia for transportation to Norris in New York, Kerper satisfied the usual rule as to delivery required of the seller. The facts in this case disclose no definite prior arrangement respecting the mode of transportation or delivery. In *Magruder* v. *Gage*, 33 Md. 344, 348, it was said that where the contract of purchase is silent as to the person or mode by which the goods are to be sent, a delivery by the vendor to a common carrier in the usual and ordinary course of business transfers the property to the vendee. In Hutchinson on Carriers, 3d Ed., Sec. 1320, it is stated that "the law will presume, when nothing appears to the contrary, that the consignee is the owner of the goods, and that the contract for their transportation was made with him as such owner." See also, *United States Mail Line* v. *Carrollton Furni-*

ture Mfg. Co., 101 Ky. 658; *Whiting* v. *Farrand*, 1 Conn. 60, 63. Under the authorities and on the facts in this case, transportation was not necessarily incidental to or absolutely required for completion of the delivery, but was a separate and distinct undertaking in addition to the completed sale.

But even if it were assumed that the transportation here involved was, as the court below held, a mere incident of the sale, it is nevertheless plain that such transportation would be an offense under Section 3, for, as indicated by the decisions of this Court heretofore cited, that offense is committed by any transportation not authorized by Title II of the Act. Hence, we submit, the rule which forbids indictments for conspiracy in that class of crimes which cannot be committed except by the agreement of two parties is not to be extended to the transportation of liquor, even though it be incidental to a sale. The dictum in the *Katz case*, to the effect that the embarrassment caused by that rule could be avoided "only if the buyer and seller were charged with conspiring to commit a substantive offense having an ingredient in addition to the sale, not requiring the agreement of two persons for its completion" would seem to be plainly applicable to an indictment for conspiracy to transport.

We submit also that the Circuit Court of Appeals erred in holding further that the facts failed to show such a degree of cooperation by Norris in the illegal transaction as to render him guilty as a conspirator to commit that offense. As said by the trial court,

Norris' connection with the illegal transaction was decidedly more than the "degree of cooperation that would not amount to a crime" referred to by this Court in *United States* v. *Holte*, 236 U. S. 140, 144. Norris did more than know and acquiesce in the transportation. He also did more than merely let Kerper know that he was in the market for liquor. By his repeated orders of whiskey telephoned from New York to Philadelphia he became party to an arrangement which required Kerper to ship the liquor and he insured service by paying as promised. Thus, he not only solicited, but bound, Kerper, by such obligation as the character of the transaction permitted, to commit the offense. The twelve shipments of liquor by Kerper to Norris supply abundant evidence of the relationship between the two. The one desired liquor; the other the profits accruing from its sale.

A manual exchange of the commodity was not practicable because of the intervening distance. The law prohibiting the transportation of liquor was an obstacle to be overcome. To circumvent possible detection and prosecution, deception was resorted to respecting both the package contents and the consignor. Even if it be assumed that the precautions taken did not spring from consultation, discussion or agreement between the two, and that Kerper alone decided upon the details to be employed in averting discovery, Norris' entanglement in the enterprise was

no less complete. No formal agreement, of course, was necessary to constitute the conspiracy; a tacit understanding was sufficient. *United States* v. *Olmstead*, 5 F. (2d) 712, 714. See also, *Williamson* v. *United States*, 207 U. S. 425, 449. Norris repeatedly accepted from the express company packages bearing false labels and shipped by fictitious consignors. He continuously deceived the carrier by failing to disclose the true contents and consignor, well knowing that the transportation would not be undertaken if the actual facts were disclosed. He violated Sections 14 and 15, Title II, of the National Prohibition Act by thus inducing the carrier to ship packages of liquor without notifying the carrier of the true nature and character of the shipment, and by receiving from the carrier packages containing liquor upon which appeared statements known to him to be false. All these things were done by him to effect the transportation to him of the liquor. There would appear to be no room for doubt that the illegal transportation was the result of agreement, mutual understanding, and concert of action between Norris and his codefendant Kerper.

In its brief in opposition to the petition for a writ of certiorari in this case, respondent relied on the cases of *Becher* v. *United States* (C. C. A. 2d), 5 F. (2d) 45, and *La Rosa* v. *United States* (C. C. A. 4th), 15 F. (2d) 479. The *Becher case* was a prosecution for conspiracy involving the importation of liquor, its storage in bonded warehouses, its withdrawal on forged per-

mits, and the procuring of bonds of indemnity against liability for import duties. Birnbaum, one of the conspirators, contended that he was merely a buyer of some of the imported liquor and that, as nothing was proved against him except that the liquor had been delivered to him and found in his cellar, there was no proof that he was a conspirator. In this connection the court said (p. 50):

> We concede at once that merely as buyer he was not a party to the scheme in any criminal sense, that on the contrary the prosecution was bound to involve him in the plan as a whole in some other sense; * * *.

The respondent contended that this was a decision against the Government's contentions in this case. We submit that the case can not be so construed.

In *La Rosa* v. *United States*, *supra*, La Rosa was convicted of conspiracy to transport, etc., intoxicating liquor. The appellate court held that the trial court had erred in its charge to the jury, and it refused to go into the question whether a certain understanding between La Rosa and others would or would not sustain a charge of conspiracy to transport. The case is therefore not authority against the propositions advanced by the Government in this case.

Finally, the effect of the opinion of the court below seems to be that ordinary rules of criminal liability for conspiracy may not be invoked against a pur-

chaser of liquor. Such a notion finds no support in the law. Whether or not the National Prohibition Act makes the act of purchase a crime in itself (a question not involved in this case), it manifestly does not invest the purchaser with any *special immunity* from the consequences of doing those things which beyond question are made criminal. The mere fact that one is a purchaser gives him no license to violate the law with impunity. If one carries liquor from place to place he is guilty of transportation; if he has it shipped into this country he is guilty of importation; and while he keeps it he is guilty of possession. This is so whether the person who transports or imports or possesses is a purchaser or not. If a purchaser agrees and cooperates with the seller to have the liquor transported not to him but to a friend, it seems clear that he is guilty of a conspiracy to transport it. So, too, if one acts as agent for a purchaser in procuring transportation. We submit that there is no reason why the fact that the agreed transportation is to himself makes him less guilty. If a purchaser may arrange to have liquor shipped to him in New York, as in this case, he may arrange to have it transported across the continent to California. Or he may purchase liquor in Europe or Canada and agree that it shall be delivered in this country, yet he cannot be convicted of conspiracy to import.

CONCLUSION

The decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

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